

TESTIMONY

Statement of
Raymond C. Scheppach

before the

Indian Affairs Committee

United States Senate

on

Chapter 6 - Native American Tribal Gambling of the Final Report by the
National Gambling Impact Study Commission

on behalf of

The National Governors' Association

June 23, 1999

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: MY NAME IS RAYMOND SCHEPPACH AND I SERVE AS THE EXECUTIVE DIRECTOR OF THE NATIONAL GOVERNORS' ASSOCIATION. I THANK YOU FOR THE OPPORTUNITY TO PRESENT THE VIEWS OF THE NATION'S GOVERNORS ON THIS IMPORTANT STUDY.

SINCE THE REPORT WAS ONLY ISSUED A FEW DAYS AGO, THESE COMMENTS SHOULD BE VIEWED AS PRELIMINARY. THE REPORT ITSELF WAS OVER 300 PAGES IN LENGTH, AND THE COMMISSION ISSUED A TOTAL OF 76 RECOMMENDATIONS. THE REPORT PROVIDES STRONG EVIDENCE THAT THE INDIAN GAMING REGULATORY ACT OF 1988 (**IGRA**) IS WORKING. IN ITS REPORT, THE COMMISSION CITES THE SUCCESSFUL COMPLETION OF NEARLY 200 TRIBAL-STATE COMPACTS FOR CLASS III GAMBLING. THE COMMISSION'S FINDING OF A THIRTY-FOLD INCREASE IN GAMBLING REVENUES FOR TRIBES OVER THE PAST 10 YEARS IS FURTHER PROOF. THE GOVERNORS BELIEVE THAT THIS EVIDENCE DEMONSTRATES THE GOOD FAITH EFFORT OF STATES TO IMPLEMENT IGRA.

MANY OF THE RECOMMENDATIONS CONTAINED IN OTHER CHAPTERS OF THE REPORT MAY HAVE SIGNIFICANT IMPACT ON TRIBAL GAMBLING AND THE STATE-TRIBAL RELATIONSHIP IN REGARD TO CLASS III GAMBLING. BUT TODAY, AT THIS EARLY STAGE, I'D LIKE TO RESTRICT MY REMARKS TO THE CHAPTER ON TRIBAL GAMING.

CHAPTER SIX: NATIVE AMERICAN TRIBAL GAMBLING

THE COMMISSION RAISED MANY CONCERNS IN THIS CHAPTER, AND SEVERAL OF THEM ARE VIEWED BY THE GOVERNORS AS MAJOR ISSUES. FIRST, I'D LIKE TO ADDRESS THOSE MAJOR AREAS WHERE THE COMMISSION'S CONCLUSIONS WERE CONSISTENT WITH THE GOVERNORS' VIEWS AND THEN HIGHLIGHT ONE SIGNIFICANT AREA WHERE WE DIFFER.

RECOMMENDATION 6-9 ENFORCEMENT OF IGRA. *"THE COMMISSION RECOMMENDS THAT THE FEDERAL GOVERNMENT FULLY AND CONSISTENTLY ENFORCE ALL PROVISIONS OF THE INDIAN GAMING REGULATORY ACT"* THE GOVERNORS APPLAUD THE COMMISSION FOR POINTING OUT THAT THE DEPARTMENT OF JUSTICE HAS NOT FULFILLED ITS -RESPONSIBILITY TO ENFORCE EXISTING LAW IN REGARD TO UNCOMPACTED GAMBLING. FAILURE TO ENFORCE STATE AUTHORITY OVER COMPACTS HAS ADDED SIGNIFICANTLY TO THE PROBLEM OF GAMBLING'S IMPACT ON THE NATION, BOTH IN HASTENING THE SPREAD OF GAMBLING AND IN CREATING AN ATMOSPHERE OF UNCERTAIN OR UNCLEAR REGULATORY RESPONSIBILITY. IF A STATE HAS NO COMPACT WITH A TRIBE OPERATING A CASINO WITHIN THAT STATE, THE STATE IS NOT ABLE TO ESTABLISH AND ENFORCE STANDARDS TO ENSURE INTEGRITY AND FISCAL RESPONSIBILITY. THE MAJORITY OF GAMBLERS IN MOST TRIBAL CASINOS ARE NOT RESIDENTS OF RESERVATIONS, BUT ARE CITIZENS OF THE STATE. THE PROTECTIONS THAT THEIR STATE COULD HAVE ESTABLISHED THROUGH A COMPACT ARE LACKING. FURTHER,

THE EXISTENCE OF SUBSTANTIAL UNCOMPACTED GAMING THREATENS THE EFFECTIVENESS OF IGRA. WHY SHOULD INDIAN TRIBES SEEK A COMPACT WITH A STATE IF THERE IS NO PENALTY FOR SKIPPING THAT STEP? GOVERNORS ARE PLEASED THAT THE COMMISSION HAS HIGHLIGHTED THIS VERY IMPORTANT ISSUE.

RECOMMENDATION 6-2 SCOPE OF GAMING. *"THE COMMISSION RECOMMENDS THAT CLASS III GAMBLING ACTIVITIES SHOULD NOT INCLUDE ANY ACTIVITIES THAT ARE NOT AVAILABLE TO OTHER CITIZENS, ENTITIES, OR ORGANIZATIONS IN A STATE, REGARDLESS OF TECHNOLOGICAL SIMILARITIES. "* THE ABILITY OF STATES TO REGULATE GAMING, AN AUTHORITY THAT IGRA CLEARLY USES AS THE BASIS FOR REQUIRING TRIBAL-STATE COMPACTS FOR CLASS III GAMING, COULD NOT EXIST IF DEFINITIONS OF THE GAMES WERE LEFT TO THE INDUSTRY AND TECHNOLOGY. TECHNOLOGY WILL CERTAINLY LEAD TO DIFFERENT APPROACHES TO MORE AND MORE GAMES OF CHANCE. IN ORDER TO REGULATE GAMBLING, IT IS IMPERATIVE THAT STATE STATUTES AND REGULATORY RULINGS BE RESPECTED. IT IS THE GOVERNORS UNDERSTANDING THAT THE *RUMSEY* DECISION ACCURATELY INTERPRETS IGRA AND ENSURES PRECISELY WHAT THE COMMISSION SUPPORTS, THAT TECHNOLOGICAL SIMILARITIES NOT BE THE BASIS FOR THE CLASSIFICATION OF GAMES. GOVERNORS ARE PLEASED THAT THE COMMISSION HAS RAISED THIS ISSUE AND PLEASED THAT THE COMMISSION OPPOSES EQUATING TECHNOLOGICALLY SIMILAR GAMES.

RECOMMENDATIONS 6-10 AND 6-12 VOLUNTARY NEGOTIATIONS BETWEEN TRIBES AND STATES. *"THE COMMISSION RECOMMENDS THAT TRIBES, STATES, AND LOCAL*

GOVERNMENTS SHOULD CONTINUE TO WORK TOGETHER TO RESOLVE ISSUES OF MUTUAL CONCERN RATHER THAN RELYING ON FEDERAL LAW TO SOLVE PROBLEMS FOR THEM (6-10); AND THE FEDERAL GOVERNMENT SHOULD LEAVE THESE ISSUES TO THE STATES AND TRIBES FOR NEGOTIATION (6-12). " THE GOVERNORS APPRECIATE THE COMMISSION'S RECOGNITION THAT STATES AND TRIBES SHOULD SEEK TO VOLUNTARILY NEGOTIATE ISSUES, WHETHER OR NOT RELATED TO GAMING. TO THE GOVERNORS, MANY TRIBAL ISSUES ARE RELATED TO GAMING BECAUSE THE STATE-TRIBAL RELATIONSHIP IS VERY COMPLEX. THE GOVERNORS CONTINUE TO SEEK VOLUNTARY DISCUSSIONS ON A WIDE RANGE OF THESE ISSUES, AND BELIEVE THAT ACTIONS OF THE DEPARTMENT OF THE INTERIOR HAVE BEEN DETRIMENTAL TO THESE DISCUSSIONS. THE GOVERNORS ARE ALSO PLEASED THAT THE COMMISSION HAS ASKED THE FEDERAL GOVERNMENT TO LEAVE THESE ISSUES TO THE STATES. BESIDES SCOPE OF GAMING ISSUES AND IMPROVED ENFORCEMENT AUTHORITY OVER UNCOMPACTED GAMING, THE GOVERNORS SEEK TO NEGOTIATE ISSUES SUCH AS GREATER STATE INPUT INTO TRUST LAND ACQUISITIONS, APPROPRIATE ENFORCEMENT MECHANISMS FOR TAXES THAT ARE LEGITIMATELY ASSESSED PURSUANT TO SETTLED PRINCIPLES OF TRIBAL LAW, AND THE NEED FOR FORMAL STATE INVOLVEMENT IN THE RECOGNITION OF NEW TRIBES.

RECOMMENDATION 6-11 ECONOMIC DEVELOPMENT AND THE LOCAL IMPACT OF GAMBLING. *"THE COMMISSION RECOMMENDS THAT GAMBLING TRIBES, STATES, AND LOCAL GOVERNMENTS SHOULD RECOGNIZE THE MUTUAL BENEFITS... OF*

INDIAN GAMBLING AND ... THE NEED FOR RECIPROCAL AGREEMENTS To MITIGATE THE NEGATIVE EFFECTS OF THE ACTIVITIES THAT MAY OCCUR..." THE COMMISSION WAS CHARGED WITH TWO EXPLICIT QUESTIONS REGARDING THE EXTENT TO WHICH GAMBLING PROVIDED REVENUES TO NATIVE AMERICAN TRIBAL GOVERNMENT, AND THE EXTENT TO WHICH ALTERNATIVE REVENUE SOURCES MAY EXIST FOR SUCH GOVERNMENTS. MUCH OF THE CHAPTER DESCRIBES THE IMPACT OF GAMBLING IN TERMS OF TRIBAL REVENUES AND SOCIAL IMPACTS. EARLIER THIS YEAR IN TESTIMONY BEFORE THIS COMMITTEE, I SUGGESTED THAT IGRA WAS BY AND LARGE A SUCCESS, POINTING OUT THE LARGE NUMBER OF TRIBAL-STATE COMPACTS. THE NEARLY 200 COMPACTS AND THE THIRTY-FOLD INCREASE IN GAMBLING REVENUES THAT TRIBES HAVE ACHIEVED IN THE LAST 10 YEARS BOTH DEMONSTRATE THAT STATES ARE VERY SUPPORTIVE OF INDIAN TRIBES' EFFORTS TO USE GAMBLING TO PROVIDE JOBS AND TO RAISE THE STANDARD OF LIVING FOR THEIR PEOPLE. WE ARE PLEASED THAT THE COMMISSION'S RESEARCH BACKS UP THIS BELIEF ABOUT IGRA'S SUCCESS AND THAT THE COMMISSION RECOGNIZES THE RESPONSIBILITY OF TRIBES TO THE LOCAL COMMUNITIES.

NOW I WOULD LIKE TO TURN TO THE ONE IMPORTANT AREA WHERE THE GOVERNORS DISAGREE WITH THE RECOMMENDATION OF THE COMMISSION.

RECOMMENDATION 6-13 BYPASS MECHANISM. *"THE COMMISSION RECOMMENDS*

THAT ALL PARTIES TO CLASS III NEGOTIATIONS SHOULD BE SUBJECT TO AN INDEPENDENT, IMPARTIAL DECISION MAKER WHO IS EMPOWERED TO APPROVE COMPACTS IN THE EVENT A STATE REFUSES TO ENTER INTO A CLASS III COMPACT...

" HERE THE COMMISSION TAKES NEARLY THE SAME STANCE AS THE DEPARTMENT OF THE INTERIOR. AFTER STATING THAT THERE HAVE BEEN DISPUTES BETWEEN THE TRIBES AND STATES IN REGARD TO CLASS III GAMBLING COMPACTS, THE COMMISSION TAKES A POSITION ON HOW THOSE MATTERS SHOULD BE RESOLVED. IT IS NOT AT ALL CLEAR THAT THE COMMISSION HAD ADEQUATE INFORMATION AND RESOURCES TO INVESTIGATE THIS MATTER. THE COMMISSION'S RECOMMENDATION IS FOCUSED ON A STATE THAT REFUSES TO ENTER INTO A CLASS III GAMBLING COMPACT. NO CIRCUMSTANCES OR FACTS ARE INCLUDED THAT MIGHT EXPLAIN THE STATE'S DECISION TO NOT ENTER A COMPACT. THIS RECOMMENDATION DOES NOT RESPECT THE SOVEREIGNTY OF THE STATES. MUCH OF THE CONFUSION AND CONFLICT THAT HAS ARISEN OUT OF IGRA IMPLEMENTATION CENTERS AROUND DETERMINING WHICH GAMBLING ACTIVITIES AND DEVICES ARE PERMITTED BY A STATE'S PUBLIC POLICY. THE GOVERNORS ASSERT THAT GAMBLING PUBLIC POLICY MUST BE DETERMINED BY READING A STATE'S LAWS AND REGULATIONS. ULTIMATELY, A GOVERNOR MUST NOT BE COMPELLED BY FEDERAL LAW TO NEGOTIATE FOR GAMBLING ACTIVITIES OR DEVICES THAT ARE NOT EXPRESSLY AUTHORIZED BY STATE LAW. THE GOVERNORS ARE DISAPPOINTED WITH THE COMMISSION'S RECOMMENDATION. IF TRADITIONAL STATE AUTHORITY TO REGULATE GAMBLING WAS THE UNDERLYING PRINCIPLE OF IGRA THAT LEAD TO THE REQUIREMENT FOR TRIBAL-STATE

COMPACTS, THEN THE AUTHORITY OF A STATE TO INTERPRET ITS GAMBLING LAWS SHOULD NOT BE PREEMPTED.

THE FULL REPORT

WHILE THE FULL RESEARCH REPORT NEEDS MORE TIME TO BE EVALUATED, ONE CONCLUSION IS CONTINUALLY REINFORCED IN EVERY SECTION, THE IMPACT OF GAMBLING ON INDIVIDUALS AND THE COMMUNITY. THIS IS A CONCERN THAT STATES HAVE AS WELL AS THE REGULATORS OF GAMBLING IN OUR FEDERAL SYSTEM. IT IS A RESPONSIBILITY THAT GOVERNORS WILL CONTINUE TO EXPLORE. THERE HAS BEEN A RAPID EXPANSION OF GAMBLING. HOW THIS SHOULD IMPACT THE STATE-TRIBAL RELATIONSHIP UNDER IGRA NEEDS TO BE FURTHER DISCUSSED. THE GOVERNORS STAND WILLING TO MEET WITH YOU AND WITH MEMBERS OF THE COMMISSION AND WITH TRIBAL REPRESENTATIVES TO FURTHER THE DEVELOPMENT OF EFFECTIVE PUBLIC POLICY IN THIS CRUCIAL ISSUE.